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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,982	03/25/2004	Carl A. Caspers	55508-296809	7038

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FAEGRE & BENSON LLP
PATENT DOCKETING - INTELLECTUAL PROPERTY
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MINNEAPOLIS, MN 55402-3901

EXAMINER

WILLSE, DAVID H

ART UNIT	PAPER NUMBER
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3738

NOTIFICATION DATE	DELIVERY MODE
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11/06/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary	Application No. 10/808,982	Applicant(s) CASPERS, CARL A.	
	Examiner David H. Willse	Art Unit 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>10-20-09</u> . | 6) <input type="checkbox"/> Other: _____ |

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In the Information Disclosure Statement of October 20, 2009, certain references **cannot** be considered because of illegible or missing pages (37 CFR 1.98(a)(2)), missing dates (37 CFR 1.98(b)(5); MPEP § 609.04(a), section I), or omitted concise explanations of relevance (37 CFR 1.98(a)(3)(i); MPEP § 609.04(a), section III).

The amendment to claim 35 fails to comply with 37 CFR 1.121 in that the text “and the residual limb for removing air at an interface between the liner and the residual limb” (last two lines of claim 35 as filed on December 10, 2007) is missing.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 21-35, 39, and 40 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 21, lines 7-8, “the space between the liner and the residual limb” (emphasis added) appears to be erroneous, particularly since the liner (as now amended) “comprises a non-porous material” (line 11). In claim 21, last two lines, “the portion of the residual limb *received in the cavity*” (emphasis added) lacks a proper antecedent basis. In claim 35, line 9 lacks proper syntax because of the missing language mentioned above.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 21-27, 31, 33, 34, 36, and 37 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Slemker, US 5,702,489, which discloses a flexible liner comprising a non-porous material (column 5, lines 53-58) adapted to cover the residual limb portion received in the cavity of a single socket **12** (Figure 1; column 2, lines 29-30) and a vacuum source (column 6, lines 28-30) in fluid communication with space **34**, for example. Regarding claim 22, attention is directed to column 1, lines 20-21; column 3, lines 63-65; etc. Regarding claims 27, 31, and others, reference is made to column 6, lines 24-25. Regarding claim 34, the Slemker device further comprises a seal member **28** (column 4, line 30 et seq.), for example.

Claims 28-30, 32, 35, and 38-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Slemker, US 5,702,489. Regarding claim 28, a motor-driven pump would have been immediately obvious from the hand-held and electronically controlled embodiments contemplated at column 6, lines 24-25. Regarding claim 30, a battery would have been obvious in order to facilitate donning and doffing at remote locations. Regarding claim 39, the seal member being formed from silicone would have been obvious from column 4, lines 36-40, and column 5, lines 42 and 55-58. Regarding claim 40, porous suspension sleeves were well known in the art at the time of the present invention and would have been obvious in order to supplement the securement between the residual limb and the socket **12**.

Applicant's amendment necessitated the new grounds of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. Attention is directed to MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37

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CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse, whose telephone number is 571-272-4762 and who is generally available Monday, Tuesday, and Thursday. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

**/David H. Willse/
Primary Examiner
Art Unit 3738**